IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 736 OF 2000

Ranjit Bahaku Mukhiya
(Yeravada Central Prison)
Pune ... Appellant
(Orig. Accused)

V/s

The State of Maharashtra .. Respondent

Shri V.N.Kamble for the Appellant
Smt. V.R.Bhosale,A.P.P. for Respondent

CORAM:S.B.MHASE AND
S.R.SATHE,JJ
DATED>:7th Feb. 2006

JUDGMENT :- (Per S.R.Sathe,J)

1. The Appellant, accused in Sessions Case NO.1466 of 1995 has preferred this appeal against the judgment and order passed by the Court of Additional Sessions Judge, Greater Bombay, whereby, the accused is convicted and sentenced to suffer r/i for 10 years and fine of Rs.2,000/- in default r/i for 6 months for the offence

punishable under Section 449, 450 and 452 of IPC, r/i for 7 years for offence punishable under Section 394, rigorous impression for 10 years and fine of Rs.500/- in default r/i for 1 year for offence punishable under Section 376 of IPC and life imprisonment and fine of Rs.5,000/- in default r/i for 1 year for offence punishable under Section 302 of IPC.

2. The brief facts giving rise to this appeal are as under:

. One Shreyas Sheth was residing in flat no.7, 3rd floor of Colaba Lands Co Op Hsg Scy along with his wife Jayshree and 2 children viz. son Chirag and daughter Bansari, aged about 13 years. Maid servant by name Bhikibai Okate was working with Sheth family since the birth of Bansari. There was another maid servant by name Laxmibai, who also used to work in their house. In June 1995 Sheth family had appointed one male servant by name Ranjit Mukhiya i.e. present accused. He also used to stay in the servant's room along with Bhikibai. The accused was not regular in attending his duty and at times he used to go away without prior intimation and on that count warnings were given to him by Shreyas Sheth. He worked in the said family for a period of about 1 to 1- 1/2 months and thereafter in the last week of July 1995 or thereabout he left the job.

3. On 8-9-1995 after finishing dinner Bansari was sleeping in her bed room adjacent to servant's room and kitchen, Chirag was sleeping in a balcony attached to drawing room and Jayshree was sleeping in master's bed room. On that day at night Shreyas Sheth was playing cards with his friends till at about 2 to 2-30 a.m. Thereafter he went to kitchen took water from refrigerator and then went to bed.

4. On 9-9-1995 at about 5-30 a.m. one Ashok Shedge, known as Bhayya, was washing the car of his master in the campus of the said Colaba Land Co Op Hsg Scy. At that time he heard scream of a women from the third floor of building no.7. He therefore called watchman Mhaipat Thakke. He also heard the scream. Both of them therefore went to servant's quarter of flat no.7 by spiral stair case. When they knocked the door of servant's quarter they found that it was bolted from inside. As there was no response from inside both of them again went on the ground floor. They then went to the main door of flat no.7 and pressed the bell. However, there was no response. Hence both of them came down. On that day Mahipat Thakke was having night duty and as such he was to return home at 7-00 a.m. However, as he had doubt about the incident that had occurred, he again went upstair at the servant's room of flat no.7. He found that door of the said room was slightly open. He, therefore, peeped through the said portion and

noticed that Bhikibai was lying in a pool of blood. He therefore immediately rushed to main door of flat no.7 and again pressed the door bell. Thereupon Shreyas Sheth and his wife awoke and opened the door. Mahipat told them that Bhikibai is lying in a pool of blood. He therefore went out of the flat and found that servant's room was open and several persons had gathered there. As he wanted to go to the room of servant's room through kitchen he went to kitchen but he noticed that door between the drawing room and kitchen was bolted from inside. He, therefore became panic and contacted his friend and immediately thereafter dialled phone no.100 for Police help. Police arrived at 7-40 a.m. Police then opened the door between drawing and kitchen room of his flat and when they went to the bed room of Bansari they found that she was also lying in a pull of blood on her bed and her throat was cut. The Police then recorded statement of watchman Mahipat Takke and same was treated as FIR. On that basis Police registered the offence at C.R.No.321 of 1995 for offences punishable under Sections 302 and 376 of IPC. Police then drew panchanama of the place of offence. While drawing the said panchanama they found that one Pendant of God Hanuman was lying in Bhikibai's room. Another maid servant Laxmibai identified the said pendant as that of the accused. She told the Police that accused used to wear one locket around his neck and pendant of God Hanuman was in the said locket. Taking this clue Police started search for

accused. In the meantime Police drew Inquest panchanama and dead bodies were sent for post mortem.

5. During the said search of accused PSI Katkade received information that accused was near Bandra, he therefore, laid a trap and arrested accused at about 5-00 p.m. near telephone booth. At that time, Police found that accused was having one rexine bag with him. When Police took search of the said bag they noticed that there were several articles in the same. Police, therefore, attached all those articles in the presence of panchas and also drew arrest panchanama. When the accused was in the Police custody on 10-9-1995 he made a statement before the Police that he would point out knife and wrist watches of Bansari concealed by him. Accordingly Police drew the memorandum and then accused led Police and panchas to a building known as Sambhav Teerth at Haji Ali and pointed out that he had thrown the knife on the top of water tank through the small whole of adjoining wall. Police therefore reached to that spot along with accused and accused pointed out the knife (**Suri**) which was lying on the top of cement water tank. Police then attached the said knife. The accused then led police and panchas to 11th floor of the said building and took out one small box kept on the loft which was in the passage. From there he produced two wrist watches - one of Casio Company and other of Timex. Police attached all these articles under panchanama.Police then showed

these articles as well as the articles which were found in the rexine bag which was with the accused to witnesses viz. Shreyas Sheth, Jayshree Sheth and Laxmibai. All of them identified those articles as that of Bansari and Bhikibai. During the investigation Police engaged the services of Dog squad and dog sniffed the Pendant of God Hanuman which was lying in house of Bhikibai. However, no further useful information could be gathered with the help of the said dog squad. Police also took photographs of the place of offence and traced 4 finger prints in the room of Bhikibai. After the arrest of the accused he was sent to medical officer for his examination and at that time it was noticed that there were some minor scratches on the person of the accused and when doctor asked him about history, the accused practically gave confession, while disclosing as to how he received those injuries. Police recorded the statements of various witnesses and after completion of the investigation P.I. Abdul Rauf filed charge sheet against the accused.

6. Finding that the accused is charge sheeted for the offence punishable under Section 376 and 302 of IPC which are exclusively triable by the court of Sessions, the learned M.M. committed the case to Sessions Court, Greater Bombay.

7. The learned Additional Sessions Judge, framed charge Exh.1 and Exh.6 against the accused for the offences

mentioned above. All the charges were read over and explained to the accused. He pleaded not guilty and claimed to be tried.

8. In order to bring home the guilt of the accused, the prosecution examined as many as 23 witnesses consisting of :

1. PW 1 Tukaram D. Bansode, draftsman, who drew the sketch of the place of offence,

2. PW 2 Mahipat Thakke, watchman who first went to the place of offence after hearing the noise,

3. PW 6 Deepak Katkade, API,

4. PW 7 Shreyas Sheth, father of deceased Bansari,

5. PW 8 Manohar Masurkar, gold smith from whom Bhikibai had purchased her ornaments,

6. PW 9 Shaileshkumar Vora, from whose shop writ watch of Bansari was purchased.

7. PW 10 Dr.Shivaji Dound, who did post mortem on the dead bodies,

8. PW 11, Ashok Shedge, who heard the scream of a woman

at about 5-30 a.m. on the date of incident,

9. PW 12, Laxmi Raghuvir, maid servant of Sheth family,

10. PW 13, Dr.Baburao Damawale, who examined accused on 10-9-1995,

11. PW 15 , Chandrashekhar Kadam, Assistant Chemical Analyser

12. PW 16 Shriram Damodar, finger print expert

13. PW 17 PS.I. Barge,

14. PW 18 Firoz Shaikh, hand writing expert,

15. PW 19 Jayshree Sheth, mother of deceased Bansari

16. PW 20 Sr PSI Abdul Rauf,

17. PW 21 Dr. Bhanudas Desai, with whom the accused was serving after he left the family of Sheth,

18. PW 22 Ramchandra Okate, brother of Bhikibai,

19. PW 23 Dr.Rao, Chief DNA Finger Printing Lab,CDFD, And 4 panch witnesses, viz.

i. PW 3 Dinesh Varma, who acted as panch for attachment of articles found with the accused,

ii PW 4 Shobhana Manjrekar, who was acted as pancha of place of offence,

iii. PW 5 Dattaram Kadam, who acted as pancha for discovery of knife

iv. PW 14 Sanjiv Vora who has acted as pancha while attaching the clothes of the accused.

9. The prosecution also produced various panchanamas and FIR Exh.20,Post mortem notes Exh.39, C.A. Reports Exhs 49, 50 and 50A, Finger Print experts Report Exh.51 etc.

10. As against this the accused did not examine any witness in his defence. From the suggestions put to the PWS and from the statement of the accused recorded under Section 313 of Cr.P.C., it appears that it is the contention of the accused that as he had left the job of Sheth family few months back he has been falsely involved in the offence.

11. After considering the evidence adduced by the prosecution, the learned trial Judge came to the conclusion that the prosecution has proved beyond reasonable doubt that the accused committed rape on

Bansari and murder of Bhikibai and Bansari. The learned trial Judge therefore passed the order of conviction and sentence as mentioned above.

12. Being aggrieved by the said order, the accused has filed the present appeal. In this appeal before us Shri V.N.Kamble, learned appointed Advocate for the Appellant has urged 3 points, firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record and has wrongly held that there was sufficient evidence to prove the offence of rape. Secondly, he canvased before us that the learned trial Judge ought to have considered the fact that there was no eye witness to the incident and prosecution had failed to establish chain of circumstances so as to prove beyond doubt that accused is involved in the offence in question. Lastly he submitted that even on the score of probabilities the evidence with regard to discovery cannot be believed because there is much distance between the place of offence and place where from the alleged discovery was made. It is difficult to believe that the accused would go to such a long distance and conceal the articles, and if at all he had concealed those two articles it cannot be believed that he would carry other articles with him. Hence he submitted that this is a fit case where benefit of doubt has to be given to the accused and accused be acquitted.

13. As against this, Smt. V.R. Bhosale, learned APP supported the judgment and order passed by the learned trial Judge.

14. The prosecution witness no. 2 Mahipat Takke who was then working as watchman in the Colaba Land Co Op Hsg Scy has stated that on 9-9-1995 at about 5-00 to 5-30 a.m. he heard screams of a woman and thereafter he had gone to third floor of the said building at flat no.7's servants quarter along with Bhayya and knocked the door but there was no response and thereafter at about 7-00 a.m. he went to that room and he found that door of the said servant's quarter was slightly open and when he peeped through, he found dead body of Bhikibai lying in a pool of blood. Even the prosecution witness PW 4 Shobhna Manjrekar, PW 6 Deepak Katkade, PW 7 Shreyas Sheth all have stated that on that day in the morning when they went in the room of Bhikibai as well in the bed room of Bansri it was noticed that their dead bodies were lying in pool of blood. From the evidence of PW 4 Shobana Manjrekar and panchanama of the place of offence it is very clear that throat of Bhikibai was found cut. So also of Bansari. So, even bear look at the dead bodies was sufficient to indicate that somebody had committed murder of Bhikibai and Bansari.

15. The prosecution has produced the post mortem report of Bhikibai as well as Bansari. Both the reports are

admitted by the defence. The prosecution has examined Dr.Dound at Exh.38. He has proved the post mortem report of Bhikibai and Bansari. The same are at Exhs 39 and 40 respectively. In the post mortem notes of Bhikibai in column no.17 it is mentioned that following injuries were found on her persons,

> "1) contusion on left side chest 3 cm x 1.5 cm 3 cm below the clavicle 2) incised wound on left hand palmer and surface at the base of index finger 2 cm x 0.5 cm bone deep 3) incised wound on left thumb dorsum on the middle phalanx of the size 0.5 cm 0.2 cm 4) incised wound on left knee joint medial aspect at the level of lower end of patella 2 cm x 1 cm muscle deep 5) incised wound on neck front and right later 1 side 5 cm behind the chin and just at the upper border of thyroids cartilage. Size of wound 16 cm long x 1.5 cm breath and 5 cm deep. The wound extending 4 cm left side and continued on right side and posterior aspect of right ear lobe, sterno mastoid muscle on both sides carotid sheath on both sides with carotid artery and jugular vain are seen cut through and through. Larynx and pharynx are seen cut completely a small cut mass seen on body of cervical vertebra 0.5 cm. in length. Thyroid cartiolage cut at the

upper border transversely 1.5 cm. length.

The cause of death is shown as "Hemorrhage and shock due to cut throat injury".

. Similarly in post mortem report Exh.40 the doctor has mentioned external injuries found on the person of Bansari. The same are as under :

1) incised wound on front side neck at the upper border of thyroid extending on both sides of neck, on right side 5 cm below and anterior to right ear lobe and 6 cm below and anterior to left ear lobe, length and wound 12.0 cm and breadth 1.5 cm just above the thyroid level on enquiry of injury both sterno mastoid muscles carotid sheath carotid artery, jugular vein, Nervas in carotid sheath are seen cut completely, larynx is seen cut with a tag of mucus membrane on post aspect. Hyoid bone is seen separated from the thryod cartilage due to cut.

The doctor has also stated that those injuries are possible by weapon before the Court. So, from all this evidence the lower Court rightly held that prosecution has proved that death of Bhikibai as well as Bansari was homicidal. In fact it is not even the contention of the

defence that death of above two deceased is not homicidal.

16. The main and material question is whether the prosecution has proved beyond reasonable doubt that death of Bhikibai and/or Bansari was caused at the hands of accused before the Court. At the outset it must be mentioned that there is no eye witness to the incident. Not only that but nobody had seen the accused near the place of offence at the relevant time. The prosecution case is entirely based on circumstantial evidence. The law with regard to the circumstantial evidence is well settled. When there is no direct evidence and the whole case turns on circumstantial evidence it is well settled that circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. It is necessary for the prosecution to prove each and every circumstance and to show a complete chain and the said circumstances must unerringly point out the guilt of the accused and if it is so, then the court can base conviction on circumstantial evidence. So, let us find out whether the circumstantial evidence in this case is sufficient to prove the guilt of the accused beyond reasonable doubt. Shri Kamble, learned Advocate for the accused submitted that considering the gravity of the charge there should be strict scrutiny of the evidence and standard of proof required for conviction should be very high. For this

purpose he has placed reliance on a case Ashish Batham v/s State of Madhya Pradesh, **AIR 2002 SC 3206**. In this authority, the Apex Court has observed that graver the charge greater has to be the standard of proof. There lies long mental distance between may be true and must be true. this proposition is not disputed and cannot be disputed. So, keeping in mind this proposition we are scrutinising and analysing the evidence on record. In fact, this being a case of circumstantial evidence as observed in a case AIR 1963 SC 74 and AIR 2002 SC 3347, we have to be circumspect.

17. It is an admitted fact that in June 1995 the accused was working in family of Shreyas Sheth and at that time he used to stay along with Bhikibai in the servant room attached to the flat of Shreyas Sheth. The prosecution witness PW 7 Shreyas Sheth and PW 19 Jayshree Sheth have both stated that the accused was not working properly. He used to remain absent without any intimation and on that count they had warned him. They have also stated that accused was in habit of picking up money left unattended. He used to receive some telephone calls from his girl friend. Prosecution witness Laxmibai Exh.61 has also stated that at the relevant time she was working in the family of Shreyas Sheth and she was knowing Bhikibai as well as accused. She has further stated that at times Bhikibai had made a complaint to her about the conduct and behaviour of accused with her. All of them have also

stated that some time in the middle of July 1995 accused left the service of Shreyas Sheth and naturally he left the room of Bhikibai. All this evidence of prosecution is not at all shaken or shattered in the cross examination. There is absolutely no reason to disbelieve the same. Thus one thing is certain that prosecution has proved that few days prior to the incident accused was serving in the family of Shreyas Sheth and had left the service in July 1995.

18. It is the case of prosecution that Police got the clue for the accused due to the pendant of God Hanuman which was found lying in the room of bhikibai near from her dead body. At the time of panchanama of the place of offence the said pendant was noticed and it was also attached. The prosecution witness Shobhana Manjrekar who is an independent witness has clearly stated in her deposition at Exh.23 that on 9-9-1995 at about 9-50 a.m. when panchanama of the place of offence was drawn one pendant of God Hanuman was found lying in the said room and the same was attached by the Police. Not only that but she has also stated that when the said pendant was shown to prosecution witness Shreyas Sheth and Jayshree Sheth and Laxmibai, they all identified the said pendant as that of the accused. The above mentioned 3 witnesses have also clearly stated in their deposition that when accused was working with the said family they had seen him wearing one locket in which there was a pendant of

God Hanuman. So, as a result of the said pendant Police got suspicion about the accused and they started search and investigation in the matter.

19. It was tried to be argued on behalf of the defence that such pendant is easily available in the local market. There was no specific mark to identify it as that of the accused. Besides this as accused was admittedly residing in the said room for few days it may be that at that time he may have forgotten the said pendant at the site. However, it is pertinent to note that accused had left the service about 2 months prior to the incident. So, there was no reason for having such pendant on the day of incident and that too near the dead body. What is more to be noted is that it is not even suggested to any of the witnesses that Bhikibai or anyone else was wearing such pendant and as such there was possibility of Pendant lying there. In fact it is proved that pendant was found near the dead body of Bhikibai at the relevant time. It is worth to note that from the panchanama Exh.10 as well as from the evidence of API Katkade, it is clear that when accused was arrested there were some scratch and abrasion on his person and doctor Damawale Exh.44 has opined that the said injuries are possible due to nails. So, it suggests that at the relevant time there might be some resistance from Bhikibai and in that process pendant might have fallen down. Much is made about the fact that no thread was

found at the said place. However, we cannot ignore the fact that after the incident and panchanama of the offence, some persons had immediately entered the said room, thread being a small negligible item, it must have disappeared. So,merely because that thread was not found one cannot jump to the conclusion that story of the prosecution of finding pendant at that place is false. If really the prosecution wanted to plant the said pendant at that place then they would have taken care to plant with broken thread. So, there is no reason to disbelieve the prosecution evidence regarding the finding of pendant of God Hanuman in the room of Bhikibai and further its connection with the accused.

20. When Police made all efforts to search the accused, they came to know the whereabouts of the accused and they received the information that accused is at Bandra and as such Police went there to trace him and accordingly on 9-9-1995 at about 5-10 p.m. the accused was found near the shop of Satellite Communication,Bandra (West). Police therefore accosted him and they took his search in the presence of 2 witnesses viz. Sanjay Ahir and Viral and accordingly panchanama was drawn. It is pertinent to note that defence has admitted the said panchanama under Section 294 of Cr.P.C. It is at Exh.10. Prosecution witness APi Katkade Exh.31 has clearly stated that on 9-9-1995 the accused was found at the above mentioned place and thereafter he was arrested and his search was

taken in the presence of panchas and panchanama Exh.10 was drawn.

21. It is specifically mentioned in the said panchanama that at that time some blood stains were noticed on the clothes of the accused. The C.A. has also opined that such blood stains were found and the same were of 'A' group which is the blood group of both deceased and accused. It is very clear that accused has not offered any satisfactory explanation about the said blood stains. So, this is a very important circumstance which supports the prosecution. Incidentally, it must be noted that it is even not the case of the defence that shirt of the accused was not attached or that the prosecution has deliberately planted such blood on the shirt of the accused. So, under such circumstances due weightage shall have to be given to the fact of finding of the blood stains of 'A' group on the shirt of the accused within few hours from the incident. It was argued on behalf of the defence that when it is the prosecution case that accused threw weapon i.e. knife (Suri) on water tank and kept 2 wrist watches at a particular place, it is difficult to believe that accused would not change his shirt. While considering this, it must be noted that blood stains were very small and negligible and the same must not have been noticed even by the accused. So,there was no substance in the argument advanced by the learned Advocate for the defence in this

behalf.

22. While considering the point of injuries on the person of the accused, reference has to be made to the evidence of Dr.Damawale Exh.46. It is pertinent to note that he has stated that on 10-9-1995 at night when he examined the accused he found following injuries on his person, viz.

> "multiple abrasions seen over right upper limb, concave in shape, varying in size from 0-5 cm to 0-6 cm with scab formation, red in colour noticed.
>
> The injuries are situated over right upper arm anteriorly and laterally, numbering 3 in number. Similar injuries are noticed on lower 1/3 and middle 1/3 of right forearm, front and back, and over dorsum of right hand.

23. The doctor has stated that when he made enquiry with accused about the injuries the accused himself gave history regarding the said injuries and at that time he clearly told the doctor as to how the incident occurred and doctor typed the same (Exh.46). It is true that this fact of mentioning the said history by doctor by typing it on a separate sheet creates some doubt. However, it must be noted that if we see Exh.46 then it is clear that

in the printed sheet Exh.46 in column of ‘any injury on the body’ and ‘history given by accused’, it is written in ink "as per separate page no.3". It is nowhere even suggested to doctor that entire exh.46 is prepared afterwards or that no injuries were noticed by doctor at that time. It is not even suggested to the doctor that he is under influence of police officers and at their instance he has written page 3 or for that matter even Exh.46 afterwards. When such is the position, why we should disbelieve this independent witness like doctor. So, the evidence of Dr.Damawale and the certificate produced by him clearly go to show that accused has in fact given extra judicial confession and has clearly admitted as to how the incident occurred. He has clearly stated that on that day he had first gone to the room of Bhikibai and he assaulted her and Bhikibai had resisted and when scuffle was going on, Bansari came out of her room and so he followed her and then in her room he committed rape on her and killed her. So, this extra judicial confession of the accused clearly proves the prosecution version.

24. It is the prosecution case that when search of the accused was taken, one rexine bag was found with him and the same was attached and searched and at that time several articles were found in the said bag and the same were attached under panchanama Exh.10, e.g. 5 recorded castes, frock, punjabi dress with Odani, Salvar kudtha,

ladies nylon shirt, ladies full shirt, two tops blue colour cap, 3 small chains, other 2 chains in which one with black boots, one small purse,Camy soap, small 5 bottles of perfume, one small pocket diary in which there was one receipt of the shop of Manohar Narayan Masurkar, one railway pass, 2 visiting cards. It must be noted that prosecution witness Shreyas Sheth Exh.33 and Jayshree Sheth Exh.67 have clearly identified these clothes which were found in the bag with the accused as that of their deceased daughter Bansari. Not only that but it has also come on record that Bansari was in habit of writing first lines of songs on the cover of the said castes. The said hand writing and admitted hand writing of Bansari were sent to hand writing expert. The hand writing expert Phiroj Shaikh Exh.60 has stated that hand writing on the castes and admitted hand writing are of one and the same person. Similarly the brother of Bhikibai Ramchandra Exh.76 has stated that he has identified the diary, nose ring which were shown to him by Police on 10-9-1995 at 7-00 p.m. in the Police station as that of his sister deceased Bhikibai and accordingly Police recorded his statement and thereafter sealed the said articles. It is pertinent to note that at the time of panchanama police had found one empty card board box of ornament in the room of Bhikibai.

25. Witness Manohar Mausrkar exh.34 has also stated that receipt shown to him (Art.18) was issued by him when

Bhikibai purchased the said articles from him. Shri Kamble, learned Advocate for defence strenuously argued before us that it is highly difficult to believe that a person who has committed murder of 2 ladies and committed rape and thereafter taken care to dispose of the weapon would carry all these articles in a bag and that too while going to watch movie. No doubt this conduct appears to be abnormal and as such difficult to believe, however, it is also often said that nobody can predict as to how the offender would behave after committing an offence. In fact human conduct is such that it is always very difficult to predict. But the question arises, whether merely because the conduct of the accused appears to be some what abnormal or improbable the evidence in that behalf is to be disbelieved, particularly when the same is otherwise duly proved by the prosecution witnesses. We cannot ignore the fact that many a times truth is stranger than fiction. In the instant case, it may be that having collected these articles from the place of offence accused may be having an intention to use it or he might not have found any suitable place to conceal all these articles and as such he might have carried the same. What exactly prompted him to carry all those articles at the relevant time, one cannot guess and imagine. When we find that panchanama of said documents/articles having found with the accused is in fact admitted by the defence under Section 294 of Cr.P.C. there is practically no scope to disbelieve the same.

Moreover, the Police Officer Katkade has also specifically stated that all those articles were found with the accused when he was arrested. What is more to be noted is that it is nowhere even suggested to API Katkade that all these articles were collected by Police from Shreyas Sheth and then they planted it with accused or they falsely drew the panchanama showing that these articles were found with the accused. In the absence of any such specific evidence or even suggestion to that effect we cannot discard the evidence of prosecution in that behalf when independent panch has also supported it.

26. An attempt was made on behalf of the defence to show that at the time of panchanama one school bag was found at the place of offence so how is it can be said that there was another bag with the accused. Firstly, the argument advanced by the learned Advocate for the defence in this behalf is misconceived. In the panchanama Exh.10 it is nowhere mentioned that school bag was found with the accused. It is only mentioned that one rexine bag was found with the accused. Besides this we cannot ignore the fact that Bansari was coming from a reach family, it is quite possible that she may be having more than one school bag. In fact the bag which was found with the accused is not at all shown as school bag. So, there is no substance in the argument advanced by the learned Advocate for the defence in this behalf. Thus, finding of the articles of deceased persons in the

possession of the accused within few hours from the crime and total failure on the part of the accused to give any explanation about the said articles leads us to irreistable conclusion under the facts of the case that accused is the person who has committed the murders of Bhikibai and Bansari.

27. There is another important peace of evidence which also connects the accused with the alleged crime. It is clear from the panchanama of the place of offence and evidence of PW 4 Shobha Manjrekar that at the time of panchanama Police had taken finger/palm prints which were found in the room of Bhikibai. They had taken in all 4 chance prints. Prosecution witness no.16 Shriram, finger print expert has stated that finger prints (palm prints) found on the top of the cupboard which was in the room of Bhikibai tally with palm prints of the accused. The evidence of this witness is not shaken or shattered in cross examination. So, there is no reason to disbelieve the same.

28. It was argued on behalf of the defence that as admittedly accused was residing in the said room at some time he might put his hand on the top of cupboard and as such there may be finger prints on the said cupboard. Here again it must be noted that during the period of about 2 months prior to the incident accused had not come to the said room, so it is difficult to believe that

finger prints which were left two months back would be visible or traceable. So, the finding of finger prints of the accused at the top of cupboard is another important circumstance which also supports the prosecution case. It is clear from the panchanama of the place of offence that articles in the room were lying in scattered condition. So, it may be while taking out the articles of Bhikibai the accused must have rested his hand on the top of the cupboard and as a result of the same his finger prints were found on the said place. If really the police had an intention to rope the accused falsely and for that purpose create such evidence they would have shown that finger prints were found on articles or at a places which were more probable, believable and acceptable. So, we do not think that evidence of the prosecution in this behalf is concocted one.

29. From the evidence of prosecution witness Shreyas Sheth Exh.33 it is very clear that soon after the incident, when he wanted to go to his daughter’s bed room i.e. Bansari’s bed room through drawing hall and the kitchen he could not do so because at that time the door in between the drawing room and kitchen was bolted from inside i.e. from kitchen side. If we take into consideration the location of the bed room of Bansari and the room of Bhikibai which is disclosed in evidence of Shreyas Sheth Exh.33, draftsman’s evidence Exh.16 and

sketch drawn by draftsman Exh.17 and panchanama of place of offence Exh.24, it is very clear that accused must have committed - first murder of Bhikibai and then of Bansari. The door in between kitchen and drawing room must have been bolted obviously with a view that parents of Bansari should not come to the place of offence. This also indicates that the said door must have been bolted by the person who was in know of the entire location of the said flat. Considering this aspect and the fact that accused was working in the said flat 2 months prior to the incident indicates that accused is connected with the alleged crime.

30. There is another very important clinching evidence against the accused. It is the case of the prosecution that when accused was in the police custody he made a statement before the Police in the presence of panchas that he would produce the knife (Suri) and wrist watches of Bansari. Accordingly, Police drew memorandum Exh.29 and then the accused led police and panchas to Sambahv Teerth Building near Haji Ali and there he produced one knife which was on the top of water tank and the same was attached by the Police. Thereafter he took police and panchas to 11th floor and there he took out one wooden box from the loft which was in the passage and took out 2 wrist watches. This discovery is duly proved by the panch witnesses Dattaram Kadam Exh.28 and PSI Barge Exh.59. Their evidence in this behalf is not at all

shaken or shattered. There is nothing in the cross examination which would indicate that the said witnesses is not trustworthy. Merely because panch witness Dattaram Kadam is a hawker and previously on 2/3 occasions he was charged by police for hawking without licence we cannot jump to the conclusion that he was under obligation and influence of the Police. He has specifically stated that on 10-9-1995 for the first time he acted as a pancha. So, from the evidence of an independent witness also it is very clear that the above mentioned articles were produced by the accused. It was tried to be argued that the place wherefrom knife was recovered was open space. It is true that top of water tank was visible and is in open space. However, from the evidence on record it is very clear that considering the height of the said water tank it was not very easy for any person to go on the top of said water tank and was not even easily visible. So merely because the place where from the accused produced the knife is in open space it cannot be said that discovery in this case is not in accordance with the provisions of Section 27 of the Evidence Act. On the contrary the facts and circumstances clearly indicate that accused was only having knowledge of the place where he had thrown the knife and as such the evidence in this behalf has to be accepted. The wrist watch produced by the accused were duly identified by witness Jayshree Sheth, mother of deceased Bansari, visiting card of Masurkar, the said

shop keeper was found in the articles in the bag of the accused. So, this is a very clinching evidence which also establishes that accused is the person who has committed murder of Bhikibai and Bansari.

31. Shri Kamble, learned Advocate for the defence argued before us that when it has come on record that watchman was appointed for the said society in which flat no.7 is situated how the accused went to the flat no.7 without he being noticed by any person and the watchman. It is needless to say that the person who wants to commit an offence would always take care to go to the place of offence in such a manner and fashion that nobody would notice him. It is true that in the instant case when the watchman Ashok Shedge heard the scream of a women and went to the third floor and knocked the door, but there was no response from the room of Bhikibai, they should have waited for some time. But merely because they did not wait there, we cannot jump to the conclusion that story given by them is false. It does appear that when door of Bhikibai was not opened they had even gone to the main door of flat no.7 and made an attempt to awake Shreyas Sheth. Admittedly, while going to main door of the flat no.7, they were required to go by other way. So, in the meantime the accused got an opportunity to escape from the said place. Much is made about the fact that when witness Ashok Shedge heard the scream, how it is possible that none else had heard the scream and

particularly Shreyas Sheth and Jayshree Sheth, who were in the said flat. While considering this aspect it must be noted that it has come on record that on that day Shreyas Sheth went to bed at about 2-30 a.m. So, it may be that he might be in fast asleep at the relevant time. What is more to be noted is that admittedly A.C. in his room as well as A.C. in the room of Bansari were on. Besides this if we see Exh.17 i.e. sketch of place of offence then it is also very clear that in between the room of Bansari and bed room of Shreyas Sheth there is passage and W.C. block. So, under such circumstances Shreyas Sheth and his wife might not have heard the scream. So,merely because no other person and Shreyas Sheth awoke at that time we cannot jump to the conclusion that story given by Shedge and watchman Mahipat Thakke Exh.19 is false.

32. One another piece of evidence, if considered in the light of all other circumstances also indicates that accused is connected with the alleged crime. It has come on record that after accused left the servants quarter of Shreyas family he was employed by Dr.Desai. Prosecution has examined him at Exh.73. He has categorically stated that accused used to stay in servants room in his flat and on 8-9-1995 when accused had asked permission to go for Ganapati immersion, he refused and thereafter accused had fought with their cook and then he had went from his flat in the afternoon and thereafter police had come to

him along with accused on 9-9-95 at 10-30 p.m. Thus we find that when normally accused was supposed to be at the residence of Dr.Desai in between night of 8th and 9th September 1995 he was not there. So, the absence of accused at the said place at the relevant time cannot be said to be a mere coincidence. If this fact is considered in the light of all other circumstances then it has importance and it certainly connects the accused with the alleged crime.

33. Thus from the totality of evidence it has to be held that all the circumstances mentioned above are duly proved by the prosecution and the same unerringly point out the guilt of the accused and establish that accused has committed the murder of Bhikibai and Bansari.

34. The accused is also charged for having committed rape on Bhikibai and Bansari. However, the learned trial Judge after considering the evidence on record has held that prosecution has failed to prove that the accused committed rape on Bhikibai. Admittedly,the prosecution has not preferred any appeal against that finding. The trial Court has however held that the accused is guilty for committing rape on Bansari. Here again admittedly there is no direct evidence and the prosecution case rests solely on the circumstantial evidence. Prosecution witness Shobha Manjrekar Exh.23 has proved the spot panchanama. In the said panchanama Exh.24 it is clearly

mentioned that when bed of Bansari was seen it was noticed that nicker of Bansari was torn and blood was coming out from her private part and private part was also torn. Even Dr.Daund Exh.38 who carried out the post mortem and prepared the post mortem note Exh.40 has clearly stated that after examining the dead body he came to the conclusion that there was sexual assault on Bansari. He has specifically stated that on examination of organs of generation (private parts) and after vaginal examination, he found that there was a bleeding with tears of hymen at 5 "O" clock and 8 "O" clock position. The blood infiltration seen in tissues at the site of injury. Hymen seen fimbriated. Uterus normal non pregnant. Hymen seen fimbriated. All those injuries were anti mortem and sexual assault was met prior to killing her. The vaginal swab collected by doctor was sent to C.A. and the C.A. has opined in his report Exh.53 that human semen is detected in the same. It is pertinent to note that as per C.A. report Exh. 49 - Jangya of the accused was sent to C.A. and semen was detected on the same. Not only that but **Raja**i which was on Bansari's bed was also sent to C.A. and it was found containing blood of A group and semen. It has also come on record that the blood group of accused is 'A'. So, having regard to all these factors and having once come to the conclusion that there is sufficient circumstantial evidence to prove beyond reasonable doubt that at relevant time the accused had gone to her room one can

safely conclude that prosecution has proved beyond reasonable doubt that accused committed rape on Bansari. It is true that so far as DNA report is concerned, there is no specific finding that after comparing vaginal semen of Bansari and the semen sample of accused it tallied. However, from the evidence of Dr.Rao Exh.81 it appears that there was some mistake in putting labels etc. So, even if we do not consider the evidence of DNA the other material on record is sufficient to draw a conclusion that accused committed rape on Bansari and thus he is guilty of offence punishable under Section 376 of IPC.

35. The learned Advocate for the accused vehemently argued before us that in the instant case the prosecution has in fact failed to prove motive and in the absence of any evidence with regard to motive merely on the basis of circumstantial evidence accused cannot be convicted. For this proposition he has placed reliance on a case Arjun Marik and Others v/s State of Bihar **1994 Supp (2) SCC 372**. I have carefully gone through the said ruling. It is nowhere mentioned in the said ruling that when the prosecution case is solely based on circumstantial evidence in absence of motive no conviction can be passed. All that has been stated in the said ruling is, when the prosecution case is solely based on circumstantial evidence motive assumes importance. In fact in this case it is observed by the Apex Court that absence of motive is not material if involvement of the

accused in crime is otherwise established. In the present case there are numerous circumstances which clearly indicate the involvement of the accused as mentioned above. So, the above stated ruling is of no help to the accused in the instant case. The prosecution has made an attempt to show that when accused was serving with Shreyas Sheth family and residing in the room of Bhikibai, he was not having good relations with her and on that count she had even made a complaint to Laxmibai, the other maid servant. His behaviour and conduct was also not liked by master i.e. Shreyas Sheth and at times he had warned him and ultimately as a result of the same accused left that job. So, according to the prosecution the accused must be having some grudge and grievance against Bhikibai as well as against Shreyas Sheth family and as such he might have gone to the room of Bhikibai. It is true that after he had left the service of Sheth family he had not gone to their house prior to date of incident. So, it does appear that there is no convincing evidence with regard to motive. It is true that motive behind the crime is relevant fact of which evidence can be given and absence of motive is also a circumstance which is relevant while assessing the evidence. However, if we take into consideration all the circumstantial evidence led by the prosecution in this case then it is very clear that absence of motive has certainly not weaken the prosecution case. It is often said that it is not the rule of law that in each and every case the

prosecution must prove motive and absence of motive is fatal to the prosecution. It is needless to say that motive is not a thing of tangible proof and as such it is very difficult to prove the same. It often happens that only the culprit himself knows what moved him to certain course of action. So, we are of the view that though the prosecution has not proved the motive in this case the same is certainly not fatal to the prosecution.

36. Thus from the above discussion it is very clear that the prosecution has established various circumstances and shown a complete chain of evidence so as to reach the only conclusion that accused committed the offence in question. We, therefore, feel that the order of conviction and sentence passed by the trial Court is legal and correct and there is no necessity to interfere with the same.

37. Before parting with the case it must be mentioned that Advocate Shri Kamble who was appointed by this Court to defend the accused took efforts to argue the defence case very ably.

38. The appeal is dismissed. The order of conviction and sentence passed by the Court of Additional Sessions Judge, Greater Mumbai in Sessions Case No.1466 of 1995 is confirmed.

39. The fees of the appointed Advocate Shri Kamble is fixed at Rs.3,000/-.

(S.R.SATHE,J.) (S.B.MHASE,J.)